

Message Text

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C O N F I D E N T I A L STATE 057969

E. O. 11652- ADS, DECLAS UPON EXCHANGE OF NOTES

TAGS: MARR, CA

SUBJ: GOOSE BAY AND ARGENTIA PENSION PLANS

1. DEPT HAS REVIEWED LEGAL BASIS FOR INCLUDING GOOSE BAY AND ARGENTIA LOCALLY- ENGAGED CIVILIANS IN BOTH CANADA PENSION PLAN (CPP) AND EXCELSIOR PLAN. OUR CONCLUSION IS THAT SUCH DUAL PARTICIPATION IS CONSISTENT WITH 1967 AGREE-
MENT RELATING TO THE CANADA PENSION PLAN. OPINION OF LEGAL ADVISER SETTING FORTH JUSTIFICATION FOR THIS POSITION HAS BEEN POUCHED TO EMBASSY.

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2. EMBASSY REQUESTED TO PROPOSE TO GOC AN EXCHANGE OF NOTES OF INTERPRETATION TO CONFIRM AGREEMENT OF BOTH GOVERNMENTS TO US POSITION AND A SECOND EXCHANGE OF NOTES TO SPECIFY THE DATE UPON WHICH COVERAGE IS TO BEGIN.

3. THE PROPOSED EXCHANGE OF NOTES OF INTERPRETATION WOULD ESTABLISH THAT GOOSE BAY AND ARGENTIA LOCALLY- ENGAGED CIVILIANS ARE ELIGIBLE FOR INCLUSION IN BOTH CPP AND EX- CELSIOR PLAN UNDER ARTICLE II OF THE AGREEMENT RELATING TO THE CPP. ARTICLE II(2) OF THAT AGREEMENT PROVIDES THAT: QUOTE INCLUSION OF EMPLOYEES UNDER THIS SECTION SHALL BE EFFECTIVE UPON THE DATE AGREED UPON BY THE CONTRACTING PARTIES UNQUOTE. ACCORDINGLY, IF GOC AGREES TO PROPOSED INTERPRETATION, A SECOND EXCHANGE OF NOTES SPECIFYING THE DATE OF INCLUSION OF THESE EMPLOYEES UNDER CPP IS REQUIRED.

4. DEPT UNDERSTANDS THAT GOC AMENABLE TO PROPOSED INTERPRETATION AND INCLINED TO ACCEPT POSITION SET FORTH IN LEGAL ADVISER'S OPINION.

5. TEXT OF PROPOSED US NOTE OF INTERPRETATION FOLLOWS: QUOTE THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS COMPLIMENTS TO THE DEPARTMENT OF EXTERNAL AFFAIRS AND HAS THE HONOR TO REFER TO RECENT DISCUSSIONS BETWEEN REPRESENTATIVES OF THE GOVERNMENT OF CANADA AND THE UNITED STATES GOVERNMENT CONCERNING THE AGREEMENT RELATING TO THE CANADA PENSION PLAN ENTERED INTO BY THE TWO GOVERNMENTS ON MAY 5, 1967.

ARTICLE III OF THE AGREEMENT EXCLUDES FROM COVERAGE UNDER THE CANADA PENSION PLAN LOCALLY ENGAGED EMPLOYEES OF THE UNITED STATES GOVERNMENT IN CANADA " WHO PARTICIPATE IN THE CIVIL SERVICE RETIREMENT SYSTEM OR OTHER UNITED STATES GOVERNMENT- FINANCED PENSION PLAN." THIS EXCLUSION WAS INTENDED BY THE UNITED STATES GOVERNMENT TO ENSURE THE AGREEMENT'S CONSISTENCY WITH LIMITATIONS UPON THE LEGAL AUTHORITY OF UNITED STATES GOVERNMENT AGENCIES IN CANADA TO PROVIDE RETIREMENT BENEFITS FOR THEIR LOCALLY ENGAGED EMPLOYEES. IN ESSENCE, THESE LIMITATIONS PRECLUDE DUPLICATE PAYMENTS BY THE UNITED STATES GOVERNMENT TO PROVIDE SIMULTANEOUS RETIREMENT COVERAGE FOR AN EMPLOYEE UNDER CANADIAN LAW
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AND PRACTICE AND ALSO UNDER A UNITED STATES GOVERNMENT

RETIREMENT SYSTEM. THE UNITED STATES GOVERNMENT UNDERSTANDS THAT THE EXCLUSION WAS AGREED TO BY THE GOVERNMENT OF CANADA IN RECOGNITION OF THESE LIMITATIONS OF AUTHORITY CONTAINED IN UNITED STATES LAW.

THE UNITED STATES GOVERNMENT DOES NOT REGARD THE ABOVE- MENTIONED EXCLUSION AS PRECLUDING PROVISION BY THE UNITED STATES GOVERNMENT TO ITS LOCALLY ENGAGED EMPLOYEES OF RETIREMENT BENEFITS SUPPLEMENTARY TO THE CANADA PENSION PLAN, SIMILAR TO THOSE SUPPLEMENTAL BENEFITS PROVIDED BY OTHER EMPLOYERS IN CANADA. SUCH SUPPLEMENTARY BENEFITS, WHEN THEY DO NOT CONSTITUTE A COMPREHENSIVE ALTERNATIVE RETIREMENT SYSTEM, CAN BE PROVIDED WITHOUT CONFLICT WITH THE ABOVE- MENTIONED LIMITATIONS OF AUTHORITY IN UNITED STATES LAW. IN PARTICULAR, LOCALLY ENGAGED EMPLOYEES AT GOOSE BAY AND ARGENTIA PRESENTLY RECEIVE RETIREMENT COVERAGE UNDER GROUP ANNUITY CONTRACTS. THE RANGE OF BENEFITS THUS PROVIDED TO THOSE EMPLOYEES IS COMPARABLE TO THE RANGE OF BENEFITS PROVIDED UNDER PRIVATE PENSION PLANS IN USE THROUGHOUT CANADA TO SUPPLEMENT THE CANADA PENSION PLAN. ACCORDINGLY, THE EMBASSY HAS THE HONOR TO PROPOSE
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